

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

COMMONWEALTH EDISON COMPANY	:	
	:	
Petition for approval of tariffs	:	No. 06-0411
Implementing ComEd's proposed	:	
residential rate stabilization program	:	

**INITIAL BRIEF OF THE PEOPLE OF THE STATE OF ILLINOIS
IN OPPOSITION TO COMMONWEALTH EDISON'S
RESIDENTIAL RATE STABILIZATION TARIFF**

**The People of the State of Illinois
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September 25, 2006

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY :

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The People of the State of Illinois (“the People”), by and through the Illinois Attorney General, Lisa Madigan, file this Initial Brief in Opposition to Commonwealth Edison’s (“ComEd”) Residential Rate Stabilization (“RRS”) Tariff, pursuant to 83 Ill Admn. Code 200.800. The People respectfully request that the Illinois Commerce Commission (“ICC” or “Commission”) deny ComEd’s petition because: (a) the costs of the proposed RRS program are more than double the most optimistic estimates of program benefits; (b) ComEd’s filing fails to comply with Article IX of the Public Utilities Act; and (c) the RRS program violates the Illinois Supreme Court’s holding in Business and Professional

People for the Public Interest, et al. v. Illinois Commerce Comm’n, 146 Ill. 2d 175, 585 N.E.2d 1032 (1990) (“BPI II”).

INTRODUCTION

On May 23, 2006, ComEd filed a petition that “seeks approval of tariffs implementing ComEd’s residential rate stabilization program (the “RRS program”) including proposed Rider RRS” (Petition of Commonwealth Edison Company to Establish a Residential Rate Stabilization Program (“Petition”), ¶1.) The petition asks the Commission to find Rider RRS, conforming revisions to related tariffs, and the charges established under them “just and reasonable.” (Petition, at 6.) The Commission is also asked to “[e]xpressly approve and order ComEd to establish and maintain a regulatory asset to account for deferred expenses resulting from the RRS program” *Id.*

In the Petition, ComEd proposed capping rate increases for all residential customers at 8% during 2007, 7% during 2008 and 6% during 2009. (Petition, ¶7.) Recovery of any additional costs would be deferred until 2010 – 2012. (Petition, ¶10.) The petition also asked the Commission to approve “a regulatory asset” in an amount equal to the deferred charges plus carrying costs. (Petition, ¶9.)

On August 1 and 2, 2006, ComEd submitted rebuttal testimony describing a revised proposal which would cap rate increases at 10% per year from 2007 through 2009 and which would allow residential customers to choose whether to participate in the program. (ComEd Exs. 4.0, 1:14 – 1:20; 4:77 – 5:109 and 7.0, 2:22 – 30; 3:52-62.) The proposal continued to evolve during ComEd’s surrebuttal testimony and was further defined in a Stipulation filed by ComEd and Staff on September 7, 2006, to include, *inter alia*, the following parameters:

- The increase in average annual residential rate per kWh would be capped at 10% per year in each of the years 2007, 2008 and 2009.**
- Customers would receive with their bills in January an explanation of the program and an enrollment form.**
- Customers could voluntarily choose to participate in the Program by filling out the form, signing it and sending it to ComEd.**
- The program would be open to anyone who is a ComEd customer at the close of the December 2006 billing period.**
- The last date to sign up for the program would be August 24, 2007.**
- Deferral amounts would be tracked and recovered on an individual customer basis.**
- Deferred balances would accrue carrying charges at a 6.5% annual rate.**

- **Deferrals would be collected during the billing periods from January 2010 – December 2012, with a final adjustment in the March 2013 billing period, if required.**
- **Participating customers that close their accounts and establish a new account with ComEd would have the option to transfer their balance and continue in the program**
- **Participating customers that close their accounts but do not establish a new account with ComEd would be required to pay the entire deferral balance with their final bill.**
- **Customers could voluntarily terminate participation in the program, with the deferral balance due immediately.**

(Summary of key provisions in ICC Staff Ex. 7.0; see also, ComEd Ex. 11.0, 1:19 – 2:55.)

In addition, ComEd is asking that “in this docket, the Commission authorize ComEd to recover the actual costs that it incurs to implement and maintain the Program in a future rate case, subject to showing that those costs were prudently incurred and reasonable in amount.” (ComEd Ex. 11.0, 8:181 – 183.) ComEd is also asking the Commission to make a determination in this docket that “those costs should be recovered from *all* residential customers not just from customers who participate in the Program.” (ComEd Ex. 11.0, 8:183 – 186, emphasis added.)

ARGUMENT

- I. The Commission should deny ComEd's petition because the costs of the RRS program are more than double the most optimistic estimates of program benefits.**

ComEd's testimony in this docket states unequivocally that "ComEd is asking the Commission to approve the RRS Program only if . . . the Commission believes that the expenditures are reasonable in light of the benefits to customers." (ComEd Ex. 11.0, 8:174 – 178.) The RRS program, evaluated on the basis of ComEd's estimates of costs and benefits, utterly fails that test. As shown below, the costs of the proposed program are 2 to 3 times greater than the most optimistic estimates of the program. Consequently, the Commission should deny ComEd's petition.

- A. The proposed RRS program would cost over \$29 million.**

The proposed RRS program would cost over \$29 million. ComEd expects the cost of administering the RRS program to total \$18.67 million. In addition, as shown below, the cost of the program will be increased by over \$10 million by unrecovered deferrals and carrying charges.

1. Costs of administering the RRS program,

ComEd's testimony states that the base cost to administer the RRS program would be \$16.27 million. (ComEd Ex. 12.0, 3.52 – 53.) The base cost is a fixed cost associated with modifying ComEd's billing system, training call center employees and other changes that would be necessary to implement the program, regardless of the number of participants. *Id.* ComEd estimates that it would cost an additional \$2.4 million to extend the enrollment period for the program through August 22, 2007. (ComEd Ex. 12.0, 5:98 -104.) Hence, the total administrative cost of the RRS program would be \$18.67 million.

ComEd estimates that approximately 3 percent of ComEd's residential customers would participate in the program. (ComEd Ex. 12.2, at 4; AG Ex. 4.0, at 1.) Since ComEd has approximately 3.38 million residential customers, that means that there would be approximately 100,000 customers participating in the program. *Id.* At this level of program participation, the administrative cost per participating customer would be \$186.70.

2. The cost of unrecovered deferrals.

ComEd estimates that 80 percent of the amounts deferred by participants in the RRS program would be uncollectible. (AG Ex. 4.1, at 1.)

This default rate is based on ComEd's historical default rate for customers with payment arrangements. *Id.* Applying this default rate to the \$11.26 million in costs which ComEd expects participants in the RRS program to defer from 2007 – 2009 until 2010 – 2012, shows that over \$9 million would not be recovered. *Id.* These uncollectible expenses raise the cost of the RRS program an additional \$9 million.

3. The cost of unrecovered carrying charges.

Customers participating in the proposed RRS program would accrue carrying charges at a 6.5% annual rate on the deferred balances. ICC Staff Ex. 7.0; ComEd Ex. 11.0, 2:53.) Applying this rate to ComEd's estimates of annual deferrals through the proposed program, customers would incur approximately \$1.70 million in total carrying charges:

	<u>Deferrals¹</u>	<u>Carrying Charges</u>
2007	\$8.36 million	\$1.36 million²

¹ AG Ex. 4.1, at 1.

² \$8.36 x 6.5%/year x 2.5 years.

2008	\$3.76 million	\$0.37 million³
2009	- \$0.87 million	- <u>\$0.03 million</u>⁴
		\$1.70 million

Based on ComEd’s historical default rate for customers with payment arrangements, it is reasonable to expect that 80 percent of the \$1.70 million in carrying charges incurred in connection with this program would not be paid. These uncollectible expenses raise the cost of the RRS program an additional \$1.36 million.

B. Participants in the RRS program would derive a maximum of \$11 million in benefits.

The largest “benefit” to customers participating in the RRS program would go to the 80 percent of participants that ComEd expects to default. These 80,000 customers would derive a “benefit” totaling \$10.37 million over the course of the program. As discussed above, this figure includes \$9.01 million in unpaid deferrals from amounts billed during 2007-2009 and \$1.36 in upaid carrying costs in connection with those deferrals.

The only additional benefit associated with the RRS program is the value of the lower interest rate paid by the 20,000 program participants

³ **\$3.76 x 6.5%/year x 1.5 years.**

⁴ **- \$0.87 x 6.5%/year x 0.5 years.**

that ComEd expects to actually pay carrying charges. These program participants can be expected to pay carrying charges of \$340,000 on \$2.25 million in deferrals over the life of the program.⁵ One way to determine the value of the lower interest rate paid by these program participants might be to compare the cost of financing \$2.25 million through the RRS program with available alternatives such as credit cards. Assuming that credit card companies charge three times the 6.5% annual rate offered through the RRS program, consumers would save \$640,000 by financing \$2.25 million in deferrals through the RRS instead of using a credit card.

This analysis shows that, at best, program participants would derive a maximum of \$11 million in benefits from the RRS program. Defaulting customers would capture over \$10 million of these benefits. The RRS program would provide no more than \$640,000 in benefits to other participants in the program.

C. The Commission should reject the proposed RRS program because the costs (over \$29 million) are more than double the most optimistic estimates of program benefits (\$11 million).

⁵ The \$340,000 estimate of carrying costs for this group of program participants is 20 percent of the total carrying costs calculated in Section A.I.3 of this brief. *Supra*, at 9. The deferred amount for this group of program participants is 20 percent of ComEd's \$11,261,636.36 estimate of "Total Deferred Amount" that appears in AG Ex. 4.1.

The People share ComEd's view that the Commission should "approve the RRS Program only if . . . the Commission believes that the expenditures are reasonable in light of the benefits to customers." (ComEd Ex. 11.0, 8:174 – 178.) The proposed RRS program does not meet this standard. It is simply not reasonable to spend over \$ 29 million to provide only \$11 million in program benefits.

The Commission should reject the proposed RRS program because the ratio of benefits (\$11 million) to costs (\$29 million) shows that the program not even close to being cost-effective. A ratio of benefits to costs over 1.0 is the standard threshold for cost-effectiveness. The ratio of benefits to costs of the RRS program is 0.38. That is, this program will cost \$2.63 for each dollar of benefit received by participating customers.

ComEd should not be allowed to spend \$2.63 to provide a dollar's worth of benefits. The same benefit could be provided at a much lower cost if, for instance, ComEd were to contribute \$11.05 million to LIHEAP or weatherization programs to assist low-income or payment-troubled customers. The RRS program is not a cost-effective means to assist these customers. The Commission should, therefore, deny ComEd's petition.

II. The Commission cannot find Rider RRS "just and reasonable" because ComEd's filing fails to comply with Section 9-201 of the Public Utilities Act.

ComEd's petition asks the Commission to find Rider RRS, conforming revisions to related tariffs, and the charges established under them "just and reasonable." (Petition, at 6.) That is not possible in this case. The Public Utilities Act ("PUA") requires a tariff on file before the Commission can make a finding of justness and reasonableness. The Commission cannot make such a finding here because ComEd has not filed a tariff in this docket.

A. PUA Article IX sets forth the requirements that must be met for the Commission to find a rate just and reasonable.

PUA Section 9-201(c) states unequivocally that "[n]o rate or other charge . . . shall be found just and reasonable unless it is consistent with Sections of this Article [IX]." 220 ILCS 5/9-201(c). PUA Section 9-201(a) requires all proposed changes in rates to be formally filed as tariffs with the Commission:

. . . no change shall be made by any public utility in any rate or other charge or classification or service...relating to or affecting any rate or other charge, classification or service..., except after 45 days' notice to the Commission and to the public as herein provided. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules or supplements stating plainly the change or changes to be made in the schedule or schedules then in force, and the time when the change or changes will go into effect and by publication in a newspaper of general circulation or such other notice to persons affected by such change as may be prescribed by rule of the Commission. The Commission, for

good cause shown, may allow changes without requiring the 45 days' notice herein provided for, by an order specifying the changes to be made and the time when they shall take effect and the manner in which they shall be filed and published.

When any change is proposed in any rate or other charge..., such proposed change shall be plainly indicated on the new schedule filed with the Commission...

220 ILCS 5/9-201(a)(emphasis added). Tariffs filed pursuant to the requirements of Section 9-201 of the Act are published on the Commission website under "Report of Rate & Tariff Daily Filings" at:

<http://www.icc.illinois.gov/rl/publicutilitypostings.aspx?ty=dailytf>.

Section 9-201 of the Act provides that once a proposed tariff is filed, a 45 day notice period commences, during which the Commission determines whether to allow the tariff to go into effect or to schedule hearings to determine the justness and reasonableness of the proposed tariff change.⁶ The Commission can approve a tariff in less than 45 days after the tariff is filed, provided the Commission finds that there is "good cause" to accelerate the process. Where the Commission elects to hold hearings, the Commission must suspend the tariffs and establish a procedural schedule.

⁶ **Filing a proposed tariff schedule, pursuant to Section 9-201 of the Act, also obligates the utility to comply with the information requirements of Part 285 of the Commission's administrative rules, which are designed to assist the Commission Staff and intervening parties "to review filings for tariffed rate increases under Section 9-201 and 16-108 of the [Act]." 83 Ill. Adm. Code 285.110(a). ComEd has failed to comply with the Part 285 information requirements in this docket.**

The Commission may “enter upon a hearing concerning the propriety of [a] rate” only when a proposed tariff is properly before it. 220 ILCS 5/9-201(b).

Once “the Commission enters upon a hearing concerning the propriety of any proposed rate [change]..., the Commission shall establish the rates or other charges...proposed, in whole or in part, or others in lieu thereof, which it shall find to be just and reasonable.” 220 ILCS 5/9-201(c)(emphasis added). In other words, once a tariff has been filed the Commission can approve it, reject it or direct the utility to implement an alternative that meets the “just and reasonable” standard.

PUA Section 9-201(a) authorizes only three courses of action that the Commission can take in response to a tariff filing: (a) allow the tariff to go into effect automatically at the end of the 45-day notice period (“pass to file”); (b) suspend the tariff prior to the end of the 45-day notice period and order proceedings to investigate the propriety of the proposed tariff; or (c) take action less than 45 days after the tariff is filed, where “good cause” has been shown to justify action on an accelerated basis. 220 ILCS 5/9-201. “A decision to pass a tariff to file or suspend rates, pursuant to Section 9-201(a), is not a formal inquiry into the propriety of the rates as in a formal

hearing under section 9-201(b).” A.Finkl and Sons Company v. Illinois Commerce Commission, 325 Ill.App.3d 142, 151, 756 N.E.2d 933, 940 (2001).

In this case, the Commission has commenced a formal inquiry into the propriety of the rates under section 9-201(b). PUA Section 901(c) makes clear that the Commission can enter a finding of justness and reasonableness only after a formal hearing like the hearing process described in Section 901(b):

If the Commission enters upon a hearing concerning the propriety of any proposed rate or other charge . . . the Commission shall establish the rates or other charges . . . proposed, in whole or in part, or others in lieu thereof, which it shall find to be just and reasonable. In such hearing, the burden of proof to establish the justness and reasonableness of the proposed rates or other charges . . . in whole and in part, shall be upon the utility. No rate or other charge . . . shall be found just and reasonable unless it is consistent with Sections of this Article.

220 ILCS 5/9-201(c).

B. ComEd’s filing does not meet requirements under PUA Article IX.

The Commission is a creature of statute, and only possesses those powers expressly granted under the Public Utilities Act. *Lowden v. Illinois Commerce Comm’n*, 376 Ill. 225, 230, 33 N.E.2d 430, 433 (1941) (“the sole power of the Commission comes from the statute [Public Utilities Act]”). PUA Article IX gives the Commission the power to find a rate

“just and reasonable” if, and only if, certain requirements are met. As noted above, the first such requirement is that a tariff has been filed.

ComEd has not filed a tariff in this docket. Although the Petition states that ComEd “seeks approval of tariffs,” a review of the “Report of Rate & Tariff Daily Filings” on the ICC website reveals that ComEd has not actually filed tariff sheets for Rider RRS with the Commission.⁷

During the June 15, 2006 Prehearing Conference for this docket, counsel for ComEd stated that ComEd does not intend to file a tariff unless or until the Commission finds the “tariffs” proposed in this docket to be just and reasonable. Tr. 14: 6-18 (June 15, 2006)

In the absence of a tariff filing, the Commission lacks statutory authority to find ComEd’s proposed rate change just and reasonable. The Commission “has power and jurisdiction only to determine facts and make orders concerning the matters specified in the statute.” *Lowden*, 376 Ill. at 230, 33 N.E.2d at 433.

Section 901 of the PUA gives the Commission only three choices: (1) pass a tariff to file after 45 days; (2) pass a tariff to file in less than 45 days where good cause has been shown; or (3) suspend the rates and commence formal hearings to determine whether the proposed tariff is “just

⁷ http://www.icc.illinois.gov/rl/publicutility_postings.aspx?ty=dailytf

and reasonable.” The holding in Finkl allows the Commission to pass a tariff to file based on a petition with tariffs attached. However, PUA sections 9-201(b) and(c) clearly contemplate a filed tariff, which the Commission is expressly authorized to suspend, pending hearings to determine whether the proposed tariff is just and reasonable. 220 ILCS 5/9-201 (b) and (c). There are no provisions in the PUA authorizing the Commission to make a “just and reasonable” finding when there is no tariff on file. Consequently, the Commission cannot find Rider-RRS “just and reasonable” because ComEd has not filed a tariff in this case.

III. The Commission should deny ComEd’s petition because all RRS program costs will not be recovered during the accounting period in which the costs are incurred, as required by BPI II.

A utility cannot recover in rates operating expenses incurred in prior periods because such a scheme would result in a mismatch of expenses and revenues in violation of the test year principle, which requires rates to be calculated using a single year of expenses and revenues.⁸ Business and

⁸ The test-year principle applies to ComEd’s RRS proposal because ComEd is a “public utilit[y] as defined in Section 3-105 of the Public Utilities Act (Act) [220 ILCS 5/3-105] . . . that [is] subject to requirements of Section 9-201 of the Act [220 ILCS 5/9-201] and Ill. Adm. Code 285. 83 Ill. Admin. Code § 287.10

- ComEd is subject to Section 9-201 in this docket because ComEd seeks to “change . . . any rate or other charge or classification or service...relating to or affecting any rate or other charge, classification or service....” 220 ILCS 5/9-201(a). In this case Section 9-201 clearly applies because ComEd seeks to change rates by reducing them in some years and

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Comm’n, 146 Ill. 2d 175, 585 N.E.2d 1032 (1990) (“BPI II”) The applicability of BPI II to the facts of the instant case is clear. The administrative and carrying costs that ComEd seeks to collect through the proposed RRS program are operating expenses. Accordingly, under BPI II, these costs must be recovered during the accounting period in which the costs are incurred. Since that is not the case, the RRS program violates BPI II.

ComEd attempts to sidestep BPI II by asserting that the holding does not apply here because the instant case is a “rate design” docket rather than a ratemaking or revenue requirement proceeding. ComEd Response to People’s Supplemental Motion to Dismiss, at 3 (August 24, 2006.)

increasing them in later years. Indeed, ComEd acknowledges that this section applies by expressly stating that the petition in this docket is filed “pursuant to Articles IX and XVI of the Illinois Public Utilities Act”. (ComEd Petition, at 1.)

- ComEd is subject to the requirements in Part 285 in this docket because, *inter alia*, ComEd’s cumulative filings over the previous 12 month period would increase ComEd’s revenues from service to residential customers by 1% or more. 83 Ill. Admin. Code §120(a). In addition to the rate increase requested in this docket, ComEd’s request for an increase in delivery services rates was filed within the previous 12 month period and seeks a rate increase that would likely increase ComEd’s revenues from service to residential customers by at least 1%. Docket No. 05-0597, tariff filed on August 31, 2005, 200, case filed September 14, 2005.**

That is factually incorrect. Com Ed also incorrectly asserts that the RRS proposal is “revenue neutral.” *Id.*

BPI II applies in this case because ComEd is seeking approval to increase its revenues by collecting additional operating expenses associated with the new RRS proposal (e.g., carrying costs and RRS implementation costs). None of these costs has been approved elsewhere. ComEd is unequivocally prohibited from recording these or other operating expenses in one year for recovery in a later year, as ComEd proposes to do in the RRS plan.

The Commission cannot approve a proposal that is so clearly prohibited by the Courts.⁹ The carrying costs and implementation costs that ComEd seeks to collect through the proposed RRS program are operating expenses. Accordingly, under BPI II, these costs must be recovered during the accounting period in which the costs are incurred. Because RRS program costs will not be recovered during the accounting period in which the costs are incurred the Commission must reject ComEd’s petition.

⁹ **ComEd has tried and failed to identify post-BPI II cases where the Commission has approved “rate phase-in plans” that involve deferred recovery of operating expenses subject to test-year principles and an increase in the utility’s revenues. ComEd Response to People’s Supplemental Motion to Dismiss, at 4 (August 24, 2006.)**

CONCLUSION

For the foregoing reasons, the People of the State of Illinois respectfully request that the Commission deny ComEd's Petition because: (a) the costs of the RRS program are more than double the most optimistic estimates of program benefits; and (b) ComEd's filing fails to comply with Article IX of the Public Utilities Act; and (c) the RRS program violates the Illinois Supreme Court's holding in BPI II.

**Respectfully Submitted,
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September 26, 2006

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY :
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Implementing ComEd's proposed :
residential rate stabilization program :

NOTICE OF FILING

PLEASE TAKE NOTICE that on September 26, 2006, the People of the State of Illinois filed an Initial Brief in Opposition to Commonwealth Edison's Residential Rate Stabilization Tariff in the above-captioned proceeding via e-Docket with the Chief Clerk of the Illinois Commerce Commission at 527 E. Capitol Avenue, Springfield, Illinois 62701.

Susan Hedman
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CERTIFICATE OF SERVICE

**I, Susan Hedman, hereby certify that the foregoing documents,
together with this Notice of Filing and Certificate of Service, were sent to
all parties of record listed on the attached service list by e-mail on
September 26, 2006. Paper copies will be provided upon request.**

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